

WRIT PETITION NO. 279 OF 1999

Shri Laxman K. Patil,
major in age, r/o
House No.1012/40,
Goa Police Housing Society,
Succoro, Porvorim,
Bardez, Goa.

.....Petitioner.

Versus

1. State of Goa,
through Chief Secretary,
Secretariat, Panaji, Goa,
2. The Inspector General of
Police, Goa Police
Headquarters,
Panaji, Goa, and
3. The Superintendent
of Police (H.Q.),
Goa Police Head Quarters,
Panaji, Goa.

.....Respondents.

Shri M. S. Sonak with Shri U. K. Tari, advocates for the petitioner.

Shri A.N.S. Nadkarni, Advocate General with Shri P. A. Kamat, Government Advocate for the respondents.

CORAM : SMT. NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE : 10th March, 2004.

JUDGMENT (Per Smt. Nishita Mhatre, J.)

This Writ Petition relates to the exercise of powers by the Disciplinary Authority under Clause (b) of the Second Proviso to Article 311(2) of the Constitution of India. The petitioner takes exception to the Order of dismissal passed against him, after dispensing with a departmental enquiry.

The facts giving rise to the present petition are as follows:

The petitioner was appointed as a Police Constable in the State on 23rd January, 1971. He was promoted to the post of Head Constable within a period of three years on 1st August, 1974. The petitioner had successfully completed certain Technical Tests held by the Board of Examination of Arms and Ammunition in the year 1964, while serving in the Defence Force, the petitioner was posted in the Goa Police Armoury for carrying out inspection and repairs to arms. During the period 1981-1982 additional charge was given to the petitioner to discharge his duty in the Armoury Workshop. However, according to the petitioner he was never given charge of the Civil Arms and Magazine rifles as these were contained in a different section of the Armoury. The petitioner has stated in the petition that from time-to-time certificates were issued to him by the respondent no.1 acknowledging his good work in the field of maintenance and cleansing of small arms at various police stations, including the Police Headquarters at Panaji. Under the provisions of the Bombay Police Manual Vol.II, which are also applicable to the Goa Police Force, the Deputy Superintendent of Police and Police Inspector of Headquarters conduct regular inspections at the Armoury. From 1970 onwards, the Defence Officer of the rank of Captain was also deputed by the Central Government for carrying out yearly audit at the Armoury. This audit was then

carried out by the Inspector General of Police from the year 1987 onwards. Sometime in 1990, charges were levelled against the Goa Police for supplying ammunition to criminals in Karnataka State. An enquiry was held by the Central Bureau of Investigation, Bangalore and the records of ammunition which were in the custody of the petitioner were checked and verified by the C.B.I. and the Committee appointed by the respondents. The Committee verified the registers of ammunition in co-relation with the ammunition issued and the dead stock register from 26th April, 1987 to 12th January, 1990 and certified that the records maintained by the petitioner were correct.

It appears that the Inspector of Police (Investigation Cell, Hyderabad), visited Goa on 12th June, 1992, on the basis of a complaint that mauzar rifles and arms were supplied from Goa Police Armoury to Peoples' War Group of Andhra Pradesh. Immediately the next day, i.e. on 13th June, 1992, the petitioner was arrested by the Hyderabad Police and taken to the State of Andhra Pradesh. He was detained in Police custody and it was only on a petition for habeas corpus being filed in this Court that it was disclosed that the petitioner was charged under the Terrorist and Disruptive Activities Act ("TADA Act" for short) and was detained at Hyderabad. On 13th June, 1992, when the petitioner was arrested, he was placed under suspension with immediate effect. The reason for his suspension was that he was

arrested by the Andhra Pradesh intelligence branch for his alleged involvement in illegal arms transactions.

The petitioner was then released on bail by the designated court under TADA Act on 2nd July, 1996. The trial was completed and on 9th April, 1999, the petitioner was acquitted of the charges levelled against him. The order of acquittal was confirmed by the Apex Court on 21st November, 2000.

After the petitioner was granted bail in Hyderabad, the Deputy Superintendent of Police (Crime Branch) Panaji, arrested the petitioner again on 26th September, 1997, under TADA Act and various Sections of the Indian Penal Code and Section 13 of the Prevention of Corruption Act, 1938. The petitioner was then enlarged on bail on 3rd January, 1998 by the designated Court under the TADA Act at Panaji.

On 4th November, 1997, i.e. when the petitioner was under arrest in Panaji, he was dismissed from service without holding any enquiry, purportedly in exercise of the powers conferred on the respondent nos.2 and 3 by the Second Proviso to Article 311 of the Constitution of India. Since the petitioner was under arrest when the order of dismissal was passed, it was not possible for him to file an appeal within the statutory period. On being enlarged on bail on 7th January, 1998, the petitioner applied for copies of the

inventory proceedings referred to in the order of dismissal in order to prefer a statutory appeal. The petitioner thereafter on 22nd January, 1998, preferred an appeal and was informed orally that his appeal could not be considered as the dismissal order was issued under the constitutional provisions. The petitioner, therefore, approached this Court in Writ Petition No.285 of 1998. This Court directed the respondents to decide the appeal after hearing the petitioner. By an Order dated 28th January, 1999, the petitioner was informed that his appeal had been disposed of. No hearing was given to him. The present Writ Petition has been filed challenging the Order of dismissal as well as the appellate Order.

2. The Order of dismissal dated 4th November, 1997, has been passed ostensibly in exercise of the power under Clause (b) of the Second Proviso to Article 311(2) of the Constitution of India. It is stated in the order of dismissal that consequent to the arrest of the petitioner verification of the Goa Police Armoury was ordered and during the course of which it was found that the petitioner, while posted from 1981 to 1992, i.e. up to the time of his arrest, in the Police Armoury had manipulated and falsified official records with a view to misappropriate Government property and had thereby sold huge quantities of arms and ammunition belonging to the Government to terrorist organizations. Further, it is stated that on checking of the records and after completion of the

inventory proceedings, it was found that several fire arms of various descriptions and several rounds of ammunition of different calibre were missing from the Police Armoury during the period when the petitioner was working in Armoury. It is then stated in the dismissal order that since the petitioner is facing criminal charges both in Hyderabad and in Goa, a regular departmental enquiry was not possible. Paragraphs 5 and 6 of the dismissal Order read as under:-

5. And whereas, the said HC-1454, Laxman K. Patil (Under Suspension) is facing criminal charges both in Hyderabad, Andhra Pradesh and in Goa, and a regular Departmental Enquiry is not possible for the following reasons:-

- a) His contacts with terrorist organisation and his presence even under suspension pose a security threat to police armouries in Goa.
- b) Since offences committed by him are prejudicial to the unity and integrity of the Nation and to the security of the State, his presence pose the risk of other policemen being subverted to such anti-national organisation.
- c) Nature of the acts of the Head Constable, Laxman K. Patil is prejudicial to the security of the State and his retention in the Police Department even under suspension any longer will not be proper and against discipline and will amount to endorsement of such anti-national activities.

6. And whereas, the undersigned who is the Appointing Authority is fully satisfied that the said HC-1454, Laxman K, Patil has committed serious deception and crime most unbecoming of a Government servant, specially of a member of a disciplined force by selling arms and ammunitions which he was supposed to safeguard. Such arms have been passed on to anti-national

extremist organisation like People's War Group which has no faith in rule of law and has been involved in large scale killing and looting. His retention in the police force amounts to approval of his anti-national activities and will adversely affect the morale and discipline of other policemen. Policemen are supposed to protect life and property of the citizens but Head Constable, Laxman K. Patil by his acts has been responsible for some of the acts of killings of innocent people. It is not reasonably practicable to give the said HC-1454, Laxman K. Patil (Under Suspension) an opportunity of showing cause as to why he should not be dismissed from service for the reasons explained above."

3. The Appellate Authority by its Order dated 28th January, 1999, dismissed the appeal. The Appellate Authority held that the Disciplinary Authority had acted within its jurisdiction while dispensing with departmental enquiry on the basis that it was reasonably not practicable to hold one. The Appellate Authority also observed that it was not possible to get hold of the witnesses who had been receiving weapons and ammunition from the appellant (petitioner herein) for activities which have cost many human lives and since the security of the State required that the petitioner be removed from service the extreme step of invoking Clause (b) of the Second Proviso to Article 311 (2) of the Constitution were necessitated.

4. In the counter filed by the third respondent, i.e. the Superintendent of Police, it is averred that there was "material to show that the petitioner had earned illegal money by selling/transferring arms and ammunition from the Goa Police Armoury to anti-social/terrorist elements". It is also

disclosed that the investigating committee, which has been appointed by the Deputy Inspector General of Police to investigate in respect of the complaints regarding missing ammunition from the Police Armoury, had submitted its report which mentioned that the petitioner was involved in manipulation of the records of the Arms Register and misappropriation of arms from the Goa Police Armoury. It has also been stated that the departmental enquiry against the petitioner was not held as it was reasonably not practicable to hold such an enquiry in view of the petitioner's links with terrorist organizations. The respondents have placed on record together with their affidavit Final Form/Report under Section 173 Criminal Procedure Code, which indicates that no chargesheet had been issued to the petitioner for want of substantial evidence against him.

5. The Report of the Committee constituted to enquire into the missing arms and ammunition has also been placed on record. This Report indicates that certain ammunition was missing and that the stock register did not tally with the existing stock. It also mentions that two kit bags belonging to the petitioner were found in the Armoury Workshop. As both these kit bags were locked, they were broken open on 19th June, 1992 (in the absence of the petitioner), and rounds of ammunition were found in them. The Committee observed that the petitioner was responsible for disappearance of the weapons, specially since some of the

missing weapons were recovered from his personal kit bags. The Committee has also observed that the missing number of weapons could not be ascertained since the weapons register had not recorded the number. It also observed that while handing over charge to the present incumbent in 1984, the petitioner had not handed over any Portuguese weapons.

6. While the respondent had taken action against the petitioner of dismissing him without an enquiry, he was exonerated of the charges levelled against him and was acquitted by the designated Court under the TADA Act in Hyderabad. The challenge to his acquittal was dismissed by the Apex Court and the acquittal was confirmed.

7. In the present case, the petitioner has challenged the Order of dismissal on various grounds. Shri Sonak, learned counsel for the petitioner, submits that the so-called reasons contained in the impugned Order do not give any evidence of the reasonable impracticability to hold the enquiry. He submits that the presumed conduct of the petitioner cannot be a basis on which the enquiry can be dispensed with. The learned counsel submits that the Proviso to Article 311 (2) of the Constitution does not invest the authority with power to dismiss without an enquiry, but the authority has power to dispense with an enquiry if it is found that it would not be reasonably practicable to hold one. The learned counsel submits that the reasons given in the

Dismissal Order for dispensing with the enquiry are not germane and relevant and are not sufficient to exercise powers under Clause (b) of the Second Proviso to Article 311 of the Constitution. He relies on the judgments in the cases of **Workmen of Hindustan Steel Ltd. & Anr. vs. Hindustan Steel Ltd. & Ors.**, 1984 (Supp) SCC 554, **Satyavir Singh & Ors. vs. Union of India & Ors.**, (1985) 4 SCC 252, **Union of India & Anr. vs. Tulsiram Patel**, AIR 1985 SC 1416, **A. K. Kaul & Anr. vs. Union of India & Anr.**, (1995) 4 SCC 73, **Chief Security Officer & Ors. vs. Singasan Rabi Das**, (1991) 1 SCC 729, **Jaswant Singh vs. State of Punjab & Ors.**, (1991) 1 SCC 362, **S. J. Meshram vs. Union of India & Ors.**, 1987 (Supp) SCC 164, **Union of India & Ors. vs. R. Reddappa & Anr.**, (1993) 4 SCC 269, **Chandigarh Administration, Union Territory, Chandigarh & Ors. vs. Ajya Manchanda & Ors.**, (1996) 3 SCC 753, **Mohomed Rayum vs. Union of India & Ors.**, 1977 Lab.I.C. 1590, and **Union of India & Ors. vs. N. K. Chanda Roy & Ors.**, 1976 Lab. I.C. 860. The learned counsel submits that the Dismissal Order was open to judicial review and this Court in exercise of its powers under Article 226 of the Constitution ought to set aside the same, as it is clearly illegal. While assailing the Appellate Authority's Order, the learned counsel submits that the Appellate Authority has to restrict itself to decide whether the reasons given by the Disciplinary Authority are genuine. The Appellate Authority cannot add to the reasons for dispensing with the enquiry, which, according to the learned counsel it has done, by observing in the Order

that it was not possible to get hold of the witnesses who had been receiving weapons and ammunition from the petitioner for activities which had cost many human lives.

8. The learned counsel also submits that the reasons stated in the Dismissal Order for dispensing with the enquiry are that the petitioner was alleged to have links with terrorist organization and that he was a security threat to the Police Armouries in Goa. He submits that these are reasons which only the President or the Governor, as the case may be, can consider for deciding whether it would be expedient to hold an enquiry in the interest of the security of the State. The learned counsel submits that if the reason for not holding an enquiry is that it was prejudicial to the security of the State, such a reason can be stated only by the President or the Governor under Clause (c) of the Second Proviso to Article 311 of the Constitution. In support of this submission he relies on the cases of **Workmen of Hindustan Steel Ltd vs. Hindustan Steel Ltd.**, (supra) and **Satyavir Singh vs. Union of India**, (supra). In any event, submits the learned counsel, imposition of the punishment of dismissal without following the rules of natural justice when the petitioner had worked for 20 years, was extremely harsh and uncalled for.

9. Per contra, the learned Advocate General has submitted before us that the Disciplinary Authority had

arrived at the conclusion that it was not reasonably practicable to hold an enquiry specially since the petitioner had links with a terrorist organization or had sold arms to that organization. He submits that once the Disciplinary Authority has arrived at a conclusion that the petitioner had links with a terrorist organization, it must be held that the authority had acted well-within its powers by dispensing with the enquiry under Clause (b) of the Second Proviso to Article 311 (2) of the Constitution. He submits that this exercise of power was neither arbitrary nor capricious. There was sufficient material before the Disciplinary Authority to take the view it has done that it would be reasonably impracticable to hold a disciplinary enquiry against the petitioner. The learned Advocate General strenuously urges before us that when a civil servant has terrorist links and is involved in matters of misappropriation of arms, the enquiry must be dispensed with and the penalty of dismissal would be justified. He further submits that the reasons for dispensing with the enquiry are germane and sufficiency of the reasons cannot be considered by this Court. He submits that a progressive and purposeful interpretation is required to be placed on Clause (b) of the Second Proviso to Article 311 (2) of the Constitution. He submits that if by dispensing with the enquiry the Disciplinary Authority has intended to suit a larger noble purpose, namely of public interest or public good, then this Court should not interfere with the assessment made by the Disciplinary Authority to dispense with the

enquiry. The learned Advocate General was at pains to point out that it is necessary for us to consider the state of the nation and the threat of terrorists, which the nation faces in the present times. He submits that this Court ought not to interfere with the decision taken by the Disciplinary Authority, which was a reasonable view, to dispense with the enquiry. The learned Advocate General relies on the judgments in the cases of **Sahadeo Singh & Ors. vs. Union of India & Ors.**, 2003 AIR SCW 940, **Chairman & Managing Director, United Commercial Bank & Ors. vs. P. C. Kakkar**, 2003 AIR SCW 944, **State Bank of India vs. Samarendra Kishore Endow & Anr.**, 1994 (2) SCC 537, **Union Territory, Chandigarh & Ors. vs. Mohinder Singh**, 1997 (3) SCC 68, **Indian Railway Construction Company Ltd. vs. Ajay Kumar**, 2003 (4) 579, **Ikramuddin Ahmed Borah vs. Superintendent of Police & Ors. Darrang & Ors.**, 1988 (Supp) SCC 663, **Union of India & Ors. vs. K. K. Dhawan**, 1993 (2) SCC 56, and **Kuldip Singh vs. State of Punjab & Ors.**, AIR 1997 SC 79, besides the other judgments referred to hereinabove which have been cited on behalf of the petitioner.

10. The case of **Union of India vs. Tulsiram Patel** (supra) which was decided by the Apex Court, considered various aspects of the pleasure doctrine encompassed in Articles 310 and 311 of the Constitution. It also considered the interpretation to be placed on the Second Proviso to Article 311 (2) of the Constitution and various circumstances in which an enquiry can be dispensed with while dismissing a

civil servant from service.

11. In the case of **Satyavir Singh vs. Union of India** (supra), Madon, J., speaking for the Bench has paraphrased the findings of the Apex Court in the case of **Tulsiram Patel** (supra). It would be advantageous to reproduce certain portions of the judgment which read as under:-

(55) there are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311(2) can be applied. These conditions are:-

- (i) There must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable; and
- (ii) The disciplinary authority should record in writing its reasons for its satisfaction that it is not reasonably practicable to hold such inquiry.

(56) Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so.

(57) It is not a total or absolute impracticability which is required by clause (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on

this question final.

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be -

- (a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or
- (b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or
- (c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation.

In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Departments case against the civil servant is weak and must fail."

While reiterating the view taken in the case of **Tulsiram Patel** (supra), the Apex Court held that the Court under Article 226 of the Constitution of India can judicially review and strike down both the order dispensing with the enquiry and the order of penalty following thereon. While articulating the scope of judicial review in respect of an order passed under Clause (b) of the Second Proviso to Article 311 (2) of the Constitution, the Apex Court has observed thus:-

- (106) In the case of civil servant who has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso to Article 311(2) or an analogous service rule, the High Court under Article 226 or this Court under Article 32 will interfere on grounds well-established in law for the exercise of its power of judicial review in matters where administrative discretion is exercised.
- (107) The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court and the court would consider whether clause (b) or an analogous service rule had been properly applied or not.
- (108) In examining the relevancy of the reasons given for dispensing with the inquiry, the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the court, will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in

question. Where two view are possible, the court will decline to interfere.

- (109) Where it is alleged that clause (b) of the second proviso or an analogous service rule was applied mala fide, the court will examine the charge of mala fides. A mere bare allegation of mala fides without any particulars of mala fides will not, however, amount to a plea of mala fides and requires to be ignored."

12. In the case in **Chief Security Officer vs. Singasan Rabi Das** (supra), the Apex Court followed the judgment in **Tulsiram Patel's** case (supra) and held that dispensation of the enquiry on the ground that it was not feasible or desirable to procure the witnesses since it would expose these witnesses and make them ineffective in future and were likely to face personal humiliation and insults, was not reason enough to dispense with the enquiry.

13. In the case of **Jaswant Singh vs. State of Punjab & Ors.** (supra), the Apex Court held that the authority dispensing with the enquiry is obliged to show that his satisfaction was based on objective facts. The Apex Court held that the decision to do away with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. It is incumbent on the authority to show that the satisfaction is based on certain objective facts and material which was in existence on the date of the passing of the impugned Order.

14. In the case of **Chandigarh Administration vs.**

Ajay Manchanda, (supra), the Apex Court was considering the dismissal, without a departmental enquiry being held, of a Sub-Inspector of Police in Punjab when the State was in the throes of serious internal disturbances. The Apex Court while considering the scope of judicial review has held that a decision to dispense with an enquiry can be challenged on the ground of absence of requisite satisfaction on the part of the empowered authority or the satisfaction having been formed mala fide. While exercising the power of judicial review, the Apex Court observed that it was necessary to keep in mind the situation obtaining in Punjab when the impugned Order was passed and that the order passed must be appreciated in that context.

15. **Kuldip Singh vs. State of Punjab**, (supra) was another case where the Apex Court considered the scope of judicial review in respect of the decision of a disciplinary authority to dispense with the enquiry. This was a case where a Head Constable while being interrogated during the investigation into a murder of a S.P. admitted to have links with terrorists and working for them. On this ground, the authority held that it was not reasonably practicable to institute an enquiry against the delinquent Police Constable, as no witness was likely to depose against the delinquent Head Constable for fear of injury to life. The Apex Court while considering all the relevant factors and bearing in mind the judgment in the case of **Tulsiram Patel** (supra), held that

although admission of guilt may not be admissible in a court of law, if the Disciplinary Authority finds that it was made voluntarily, then the Disciplinary Authority can act on the same and dispense with the enquiry. The Court should not, in such a case, examine the correctness of such an opinion of the Disciplinary Authority. The Supreme Court then observed that although admission of guilty made to a Police Officer may not be admissible in evidence under the Evidence Act, 1872, strict rules of evidence are not applicable in the case of departmental enquiries and, therefore, even such a confession could be the basis on which an authority can arrive at a conclusion that it was reasonably impracticable to hold an enquiry.

16. In **Union Territory, Chandigarh vs. Mohinder Singh**, (supra), also the Supreme Court was considering the case of a Sub-Inspector of Police against whom an order of dismissal, without an enquiry, on the ground that the witnesses would not come forward freely to depose against him in a regular departmental enquiry. The Court has observed that it was not necessary that in every case the Court should blindly accept the recital in terms of the Proviso to Article 311 contained in the Order of dismissal.

17. In the case of **Indian Railway Construction Co., Ltd. vs. Ajay Kumar**, (supra), The Apex Court observed thus:-

"12. It is fairly well settled that the

power to dismiss an employee by dispensing with an enquiry is not to be exercised so as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the court to substitute its view for that of the disciplinary authority as if the court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly take note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry."

18. The Apex Court considered the scope of Clause (c) of the Second Proviso to Article 311 (2) of the Constitution in **A. K. Kaul vs. Union of India**, (supra) and held that even when the Government claims a privilege it must disclose to the Court/Tribunal the nature of activities which the Government employee had allegedly indulged in, in order that the Court upholds the action taken by the President or the Governor for dispensing with an enquiry, since it was not expedient to hold one.

19. In the case of **Workmen of Hindustan Steel Ltd. vs. Hindustan Steel Ltd.**, (supra), the Apex Court considered the termination of services of industrial workmen without holding an enquiry. No enquiry was held as the Standing Order applicable permitted dispensation of an enquiry, if a workman had been convicted for a criminal offence and the General

Manager was satisfied that it was inexpedient to hold an enquiry in the interests of security. While deciding the effect and ambit of the Standing Order, the Apex Court has considered the scope of Article 311 (2) of the Constitution. The Apex Court has observed that although there is a power to dispense with an enquiry, this power is hedged in with a condition of setting down in writing the reasons for such power being exercised. The Apex Court has further observed thus:-

"Obviously therefore the reasons which would permit exercise of power must be such as would clearly spell out that the inquiry if held would be counter-productive. The duty to specify by reasons the satisfaction for holding that the inquiry was not reasonably practicable cannot be dispensed with. the reasons must be germane to the issue and would be subject to a limited judicial review. Undoubtedly sub-article (3) of Article 311 provides that the decision of the authority in this behalf is final. This only means that the court cannot inquire into adequacy or sufficiency of reasons. But if the reasons ex facie are not germane to the issue namely of dispensing with inquiry the court in a petition for a writ of certiorari can always examine reasons ex facie and if they are not germane to the issue record a finding that the prerequisite for exercise of power having not been satisfied, the exercise of power was bad or without jurisdiction. If the court is satisfied that the reasons which prompted the concerned authority to record a finding that it was not reasonably practicable to hold the inquiry, obviously the satisfaction would be a veneer to dispense with the inquiry and the court may reject the same. What is obligatory is to specify the reasons for the satisfaction of the authority that it was not reasonably practicable to hold such an inquiry. Once the reasons are specified and are certainly subject to limited judicial review as in a writ for certiorari, the court would examine whether the reasons were germane to the issue or was merely

a cloak, device or a pretence to dispense with the inquiry and to impose the penalty. Let it not be forgotten what is laid down by a catena of decisions that where an order casts a stigma or affects livelihood before making the order, principles of natural justice namely a reasonable opportunity to present one's case and controvert the adverse evidence must have full play. Thus even where the Constitution permits dispensing with the inquiry, a safeguard is introduced that the concerned authority must specify reasons for its decision why it was not reasonably practicable to hold the inquiry."

20. In the case of **Union of India vs. N. K. Chanda Roy**, (supra), The Calcutta High Court has considered the scope of judicial review and has held that the recording of reasons is a mandatory requirement of the Constitution. Similarly, in **Mohomed Tayum vs. Union of India**, (supra), a Division Bench of this Court has also considered the scope of Clause (b) of the Second Proviso to Article 311 (2) of the Constitution.

22. Adverting now to the facts before us, keeping in mind the conspectus of law cited before us, it would be appropriate to consider the circumstances in which the dismissal Order was passed. The three reasons enumerated for dispensing with the enquiry are that:-

- (i) The petitioner had contacts with terrorist organizations and that his presence even under suspension posed a security threat to the Police Armouries in Goa;

(ii) that the offences committed by him were prejudicial to the unity and integrity of the nation and the security of the State and his presence posed a risk to other policemen being subverted to anti-national organizations; and

(iii) that the nature of the acts committed by the petitioner were prejudicial to the security of the State and his retention in the Police Department even after suspension would not be proper and against discipline and would amount to an endorsement of anti-national activities.

The main reason for the petitioner being dismissed from service as can be discerned from the dismissal Order is that he had misappropriated arms from the Armoury and had fabricated records in the inventory and registers. The Disciplinary Authority reached this conclusion on the basis of the report of the Commission of Enquiry constituted to enquire into the missing arms from the Police Armoury. These acts alleged against the petitioner may constitute a serious act of misconduct. However the gravity of the charge levelled against a civil servant cannot determine whether the enquiry ought to be held prior to dismissal.

23. An additional factor which impressed the Disciplinary Authority to dispense with enquiry was that the arms had in turn been passed to anti-national extremist organizations and, therefore retaining the petitioner in the Police force would amount to approval of anti-national activities. While considering this dismissal Order, one must bear in mind that the order was passed on 4th November, 1997, five years after the petitioner was suspended from service. In 1997, the petitioner had already been granted bail by the designated court under the TADA Act at Hyderabad and had been re-arrested in Goa on various charges, including charges under the TADA Act. Before the petitioner was arrested in September, 1997, he had approached the respondents to hold an enquiry against him so that he could clear his name. These statements made in the petition have not been denied by the respondents on affidavit. In fact, no chargesheet was filed in Goa for want of substantial evidence against him. If indeed there was some evidence against the petitioner or material on the basis of which it could be said that the petitioner had links with terrorist organizations, due to which it was necessary to dispense with an enquiry, there would be some indication at least in the chargesheet filed, in Goa. We cannot be unmindful of the fact that the petitioner's arrest under the TADA Act has resulted in an acquittal by the designated Court at Hyderabad, albeit in 1999. We would have to consider as to whether any reasonable person in 1997 could conclude that it was impracticable, or not reasonably

practicable, to hold an enquiry in respect of misappropriation of arms and the alleged links with terrorist organizations, on which basis the petitioner was sought to be suspended in 1992. In 1992, it may have been reasonably impracticable to hold an enquiry against the petitioner, specially since he was arrested and was enlarged on bail only in 1997, by the designated court under the TADA Act. There is nothing on record before us to indicate why no enquiry was sought to be held after the petitioner was enlarged on bail on 2nd July, 1996 and what was the reason for the dismissal Order being passed only after the petitioner was arrested in September, 1997, by the respondents.

24. From the records placed before us by the learned Advocate General on the basis of which it appears that the Disciplinary Authority came to the conclusion in 1997 that it was reasonably impracticable to hold an enquiry, we find that it was on the basis of a confession made in 1992 by one of the accused in Hyderabad who mentioned the petitioner's name, that the petitioner was arrested. On this basis it was claimed that the petitioner had links with a terrorist organization and, therefore, it was reasonably impracticable to hold an enquiry. If such a decision had been taken by the Disciplinary Authority immediately after the petitioner's arrest in 1992, we would have been slow to interfere with the order. However, after a passage of five years, it is difficult to believe that it was not reasonably practicable to

hold an enquiry.

25. The submission made by the learned Advocate General that once the authority comes to the conclusion that the delinquent employee has terrorist links this Court in exercise of its powers of judicial review should not, in the prevalent circumstances in the country, set aside the order dispensing with the enquiry, cannot be accepted. This would lead to ominous results. Such power could then be exercised in an arbitrary and capricious manner and at the ipse dixit of the Disciplinary Authority. The High Court while exercising its power of judicial review under Article 226 of the Constitution should not be over-awed by the use of the words "terrorist links", or "threat to the security of the nation", etc. Each case would have to be decided on its own merits. In the present case, the reasons for dispensing with the enquiry are not germane. According to the Disciplinary Authority, the presence of the petitioner at the Police Headquarters, even under suspension posed a security threat to the Police armouries and all other policemen being subverted to anti-national organizations, cannot be accepted as germane. The petitioner had already been arrested by the Government of Goa when the impugned Order was passed. The respondents could have held an enquiry and established the fact that the petitioner had misused his position as Head Constable posted in the Armoury and had misappropriated arms and ammunition and also had fabricated the registers. In fact, this was the

basis of the charge against the petitioner which was then made to sound more serious by linking the same to the petitioner's alleged anti-national activities.

26. No doubt the petitioner has not alleged specific mala fides against the respondents, except by making a bald statement that the decision of the Disciplinary Authority was actuated by mala fides. This Court cannot sit in judgment over the reasons like a Court of First Appeal. We would have to consider the situation prevailing in 1997 when the impugned Order was passed. As stated earlier, in 1997, we do not think that the reasons set out in the dismissal Order were germane or that the situation prevalent when the dismissal Order was passed required the Disciplinary Authority to dispense with the enquiry. It was not as if the dismissal Order has been passed immediately after the petitioner was arrested in Hyderabad under the TADA Act, or soon thereafter. Only after a period of five years had elapsed that the Disciplinary Authority considered a confessional statement of an accused belonging to a terrorist organization, who mentioned the name of the petitioner, as having supplied arms. We are not impressed by the submission made on behalf of the State that even in 1997 it was reasonably impracticable to hold an enquiry against the petitioner. Certainly, the reasons for dispensing with the enquiry are not germane. As observed in **Tulsiram Patel's** case (supra), the Disciplinary Authority cannot avoid holding the enquiry in an arbitrary manner or

because the case against the civil servant may fall.

27. The judgment cited by the learned Advocate General in the case of **Union of India vs. K. K. Dhawan** (supra), is not very material for deciding the issues involved in the present case.

28. The learned Advocate General relied on the judgment in the case of **State Bank of India & Ors. vs. Samarendra Kishore Endow & Anr.**, (supra) to submit that the scope of judicial review is restricted and the High Court should not normally interfere with the punishment imposed on a delinquent civil servant. This Judgment, however, is in respect of punishment being imposed pursuant to an enquiry being held. In those circumstances the Supreme Court held that the scope of judicial review of punishment in cases where enquiry has been held is different from the cases where no enquiry has been held. The judgment in this case is not relevant to the facts and circumstances obtaining in the present Writ Petition.

29. In the case of **Ikramuddin Ahmed Borah vs. Superintendent of Police, Darrang & Ors.** (supra), relied on by the learned Advocate General was in respect of the Sub-Inspector of Police, who was dismissed from service by invoking the powers under Clause (b) of the Second Provisos to Article 311 (2) of the Constitution. In this case, the Apex

Court has followed the judgment in **Tulsiram Patel's** case and held that since the Superintendent of Police who had passed an order of dismissal was the best authority on the spot to assess the situation in the circumstances prevailing at the relevant time, there was no ground to interfere in the decision taken by the Superintendent of Police to dispense with the enquiry. In the present case we have already expressed our opinion that there was certainly an abuse of power by the Disciplinary Authority in invoking Clause (b). The circumstances prevailing in 1997 were not such as would require any emergent action on the part of the respondents for dispensing with the enquiry.

30. In the case of **Sahadeo Singh vs. Union of India**, (supra), the Apex Court considered Section 9 of the Railway Protection Force Act, 1957 and Rule 47 of the Railway Protection Force Rules (1959), which permitted the railway authorities to dispense with an enquiry if it was found impracticable to hold a fair enquiry. In the facts of that case, the Apex Court held that since the witnesses were not willing to either give a statement in writing or give evidence apprehending danger to their lives, it was impracticable to hold an enquiry. This case is not very relevant to the facts in the present case where the Disciplinary Authority has not given such a reason to dispense with the enquiry.

31. In the case of **Chairman and Managing Director**,

United Commercial Bank vs. P.C. Kakkar, (supra), the Court held that there was no need to interfere with the Order of dismissal passed pursuant to the findings recorded by the Enquiry Officer. The Supreme Court considered that the mere expression "that the punishment imposed was shockingly disproportionate" would not meet the requirements of law for setting aside the punishment. The charge against the employee in that case was fabricating and manipulating records which the Supreme Court found were not casual in nature and that dismissal was the proper punishment. In the present case no enquiry is held, therefore, the scope of judicial review is entirely different as observed in the case of **Tulsiram Patel** (supra).

32. The Appellate Authority also, it appears has not given the petitioner any hearing despite an Order of this Court. An affidavit has been filed in reply to the petition, wherein it has been stated that since the Inspector General of Police who had passed the impugned Order in appeal had retired, it was not possible to comment on the petitioner's allegation and that it should be presumed that the petitioner had been given a personal hearing. Therefore, there is no categorical denial of the statement by the petitioner that he was given no personal hearing by the Appellate Authority. The Order of the Appellate Authority besides reiterating the reasons mentioned in the Order of the Disciplinary Authority, stipulates another reason as to why the enquiry was not held.

This reason is that it would not be possible to examine the witnesses who had received the weapons and ammunition from the appellant, i.e. the petitioner herein and hence, has confirmed the order of the Disciplinary Authority. This assumption made by the Appellate Authority must be set aside, since the reasons are not germane. As held by the Apex Court in the case of **Union of India vs. R. Reddappa**, (supra) mere reiteration or repetition instead of adding strength to the order, renders it weaker and more vulnerable as even the higher authority, i.e. the Appellate Authority, would be deemed to have failed in discharge of its obligation.

33. Shri Sonak, the learned counsel for the petitioner has submitted before us that when one of the reasons ascribed for dispensing with the departmental enquiry is that the civil servant posed a threat to the nation, only the Governor or the President, as the case may be, can satisfy himself that it would not be expedient to hold enquiry. According to the learned counsel such a reason cannot be considered by the Disciplinary Authority for dispensing with the enquiry. We are not inclined to accept this submission of the learned counsel. In a given case, even the Disciplinary Authority can take emergent action and dispense with an enquiry if the civil servant is a threat to the security of the nation. It is not necessary that in every case the President, or the Governor, as the case may be, must consider the expediency of holding an enquiry.

34. In the circumstances, the Order of Dismissal is set aside. The Order of the Appellate Authority is also set aside. The petitioner has already reached the age of superannuation. He would, therefore, be entitled to all consequential monetary benefits, pursuant to the impugned orders being set aside.

Rule made absolute accordingly, with costs.

The respondents, if so advised, are at liberty to hold a disciplinary enquiry in respect of the charges levelled against the petitioner in accordance with law and the principles of natural justice and fair play.

SMT. NISHITA MHATRE, J.

P. V. HARDAS, J.

mc.